HON'BLE SRI JUSTICE P.DURGA PRASAD

Crl.A.No.2422 of 2004

JUDGMENT :

This appeal arising out of the conviction and sentence passed by the Special Sessions Judge, Kurnool, dated 19.10.2004 in SC ST SC No.29 of 2004, wherein the appellant herein was prosecuted for the offence under Section 324 IPC and Section 3(1) (x) of SC ST (Prevention of Atrocities) Act, 1989 (for short 'the Act').

The case of the prosecution is that on 04.06.2003 at 10.00 a.m. at Government School of G.Veerapuram village of Kothapalli Mandal, P.Ws.4 and 5 beat PW.2, who is the brother of the defacto-complainant, for his asking them about missing of his chappals, then the defacto-complainant went there and enquired as to who beat his brother, upon which the accused got wild and abused the defacto-complainant in the name of his caste and also beat him with a stick causing simply injury. On the next day i.e., on 05.06.2003, the defacto-complainant submitted report to the Sub-Divisional Police Officer, Atmakur, who endorsed the same to the Station House Officer, Kothapalli Police Station, for registering the case under Section 323 IPC and Section 3 (1) (x) of the SC ST (POA) Act. Basing on it, the Assistant Sub-Inspector of Police, registered the case in Crime No.26 of 2003 for the offences punishable under Section 323 IPC and Section 3 (1) (x) of SC ST (POA) Act. After completion of investigation, the charge sheet was filed.

The learned Sessions Judge has framed the charges under Section 324 IPC and 3(i)(x) of the Act against the accused and the accused

pleaded not guilty for the said charges.

The prosecution in all examined PWs 1 to 12 and marked documents Exs.P.1 to P.10. No oral or documentary evidence was adduced on behalf of the accused.

The learned Special Judge, by taking into consideration the said oral and documentary evidence, found the accused guilty for the offence under Section 3(i)(x) of the Act and under Section 324 IPC and convicted and sentenced him to undergo simple imprisonment for a period of six months for an offence under Section 3(i)(x) of the Act and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for three months and further sentenced to undergo simple imprisonment for a period of six months for an offence under Section 324 IPC. Aggrieved by the said conviction, the present appeal is filed.

The point for consideration is whether the prosecution could be able to establish the charges under Section 3(i)(x) of the Act and Section 324 of IPC framed against the accused beyond reasonable doubt?

The appellant counsel has pleaded that even though the alleged incident was said to have been taken place on 04.06.2003 at 10 A.M., PW.1 lodged a complaint on 05.06.2003 and there is a delay of 24 hours in lodging the complaint. He further submitted that the reasons for the delay in lodging the report is not explained by PW.1. Even though PW.1 has stated in his evidence that due to the absence of S.I. of Police in the police station, he has gone to the D.S.P. and submitted his report on the next day, the same is not supported by the evidence of PWs 11 and 12. The next contention of the learned appellant counsel is that the names of other persons were also referred to in Ex.P.1 complaint, but during investigation, nothing was mentioned about the said persons and the independent witnesses, who are said to have rescued PW.1 from the

clutches of the accused turned hostile to the prosecution. Therefore, it is doubtful whether the incident as alleged has taken place or not. The appellant counsel further argued that the alleged incident has taken place between the children and unnecessarily PW.1 involved the accused in this case after due consultation with his caste elders and lodged a false complaint against the accused.

According to the prosecution, the incident has taken place on 04.06.2003 at 10 A.M. and, admittedly, PW.1 has lodged the complaint on 05.06.2003 at 11.30 A.M. PW.1, in his chief examination, has stated that he has submitted Ex.P.1 report to the D.S.P. on 05.06.2003 directly, as the S.I. was not available on 04.06.2003. In the charge sheet, it was mentioned that due to fear, he could not prefer the complaint immediately to the police and PW.11 who has registered the case on the complaint against Ex.P.1, has simply stated that he has received the complaint with an endorsement of SDPO to register a case under Section 323 IPC and under Section 3(i)(x) of SC ST (POA) Act and, thereupon, he registered the same. PW.12 the SDPO, has stated that he has received the complaint from PWs 1 and 2 while he was in the office at 10.30 A.M. on 05.06.2003 and he has sent the same to the Station House Officer of Kothapalli Police Station with an endorsement on it to register the case. Ex.P.1, the complaint, does not disclose any reasons for the delay in lodging the complaint. Therefore, the reasons stated by PW.1 that as the Sub-Inspector of Police is not available in the police station, he has gone to the Dy.S.P. on the next day and lodged complaint cannot be believed as the Station House Officer must be available in the police station through out the day and more over PW.1 did not state when he has gone to the Kothapalli police station to lodge the complaint after the incident. Then if the contention of PW.1 that the Sub-Inspector of Police was not

available in the police station on 4.6.2003 is accepted, then what prevented him in approaching D.S.P. on the same day ie. 04.06.2003. Therefore, the delay of 24 hours in lodging the complaint was not explained by the prosecution and the same is fatal to the case of the prosecution.

With regard to the alleged incident, PW.1 has stated that he studied up to Intermediate and he belongs to Mala caste. PW.2 -Dolu Nagarjuna is his younger brother. He stated that on 04.06.2003 at 10.00 A.M., while he was present in his house, Vijaya Kumar informed him that Srinivasa Reddy and Ramakrishna Reddy beat his brother near Elementary school in their village, then, he rushed to the school and asked one of the student as to who beat his brother, then at that time, the accused came and abused him by his caste name and so saying, he beat him with stick on the back side of his head and left fore arm. PW.1 also stated that the accused caught hold of him and tried to tie him, but LWs 7 to 9, who were coming from the fields, rescued him from the hands of the accused. In the cross-examination, PW.1 admitted that his brother was studying 5th class in the Elementary school and he denied that he has gone to the school and abused the reddy community people. He admitted that the accused asked him why he was abusing the reddy community people and the accused abused him by his caste.

P.W.2, the brother of PW.1, has stated that on 04.06.2003, while he was studying 5th class in M.P.Elementary school, he went to school at about 10 A.M. and left his slippers outside the class room for taking mid day meals. After taking meals, he came out and found his slippers were missing. Then he enquired about his slippers with Vijaya Kumar, who is studying in their school, and Vijaya Kumar told him to ask about his slippers to Ramakrishna Reddy and Srinivasa Reddy, as they were out

side the class room. When he enquired with Rama Krishna Reddy and Srinivasa Reddy, they abused him stating that in what way they are concerned with his slippers and Srinivasa Reddy has slapped him on his cheek and Ramakrishna Reddy dashed him with his cycle. Then he told Vijaya Kumar to call his brother. Then, PW.1 met him at the house of the accused while he was returning from the school. When PW.1 questioned who beat his brother, the accused abused PW.1 by touching his caste name and also beat PW.1 on his left fore arm and back side of his head and accused caught hold of his brother to tie him.

PW.6 -Vijaya Kumar has stated that he has gone to the house of PW.1 and informed him about beating of PW.2.

The other witness PW.3 Naga Seshulu has only spoken about the incident between PW.2 and Ramakrishna Reddy and Srinivasa Reddy and has not spoken anything about the alleged incident involving the accused.

PW.4 - B.Ramakrishna Reddy has expressed that he does not know whether any galata took place near elementary school and he denied about his giving dash to PW.2 with his cycle and he also did not speak anything about the incident involving the accused.

Even, PW.5 S.Srinivasa Reddy has turned hostile to the prosecution and spoken nothing about the incident. The other witnesses PW.7-S.Chennaiah, PW.8 -D.Ramanna and PW.9 –Manikyamma, who are said to be the persons who came to the spot and rescued PW.1 from the clutches of accused, have turned hostile to the prosecution and did not say anything about the incident. Therefore, the only evidence available on record is the evidence of PWs 1 and 2. Both PWs 1 and 2 are brothers and as per the evidence of PW.1 he himself admitted that the accused questioned him as to why he was abusing him by reddy community

people, then abused him by his caste. Therefore, from the above, it is evident that PW.1 started abusing accused by his caste and then only the accused abused PW.1 by his caste. More over, there is a delay of 24 hours in lodging the complaint. In the above circumstances, it is not safe to rely on the evidence of interested witnesses ie. PWs 1 and 2, as the independent witnesses ie. PWs 7, 8 and 9 have turned hostile to the prosecution.

The Investigating Officer - PW.12 has also stated that when PW.1 was abusing reddy community people, then accused came there and beat PW.1 by abusing his caste. Therefore, even from the evidence of PW.12, it is clear that the alleged incident has taken place because of PW.1 abusing the accused by his caste. Thus, I hold that the prosecution has failed to establish the offence under Section 3(i)(x) of the Act beyond reasonable doubt. With regard to the offence under Section 324 IPC, as per the doctor's evidence, PW.1 was examined on 05.06.003 at 2.30 P.M. and found only a contusion of 5" x ¼" on the posterior aspect of the left fore arm and an abrasion of 4" x ¼" placed horizontally on naphe of neck and, according to the doctor, the said injuries might have been caused with a blunt object.

As already observed above, the evidence of PWs 1 and 2 cannot be relied upon without any corroboration. The said factum of the accused beating PW.1 also cannot be believed without any corroboration. Therefore, in view of the above circumstances, I hold that the prosecution has failed to establish the offence under Section 324 IPC beyond reasonable doubt. Hence, the prosecution has failed to establish the charges framed against the accused beyond reasonable and the accused is entitled to the benefit of doubt.

In the result, the appeal is allowed and the conviction and sentence

passed by the Special Sessions Judge, Kurnool, dated 19.10.2004 in SC ST SC No.29 of 2004 is hereby set aside.

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JUSTICE P.DURGA PRASAD

1st March, 2011

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